

AGENDA - November 17, 1999 Business Taxes Committee Meeting
Vehicle Smog Impact Fee Refund Notification

Action 1 - Feepayer Notification	<p>Adopt either:</p> <ol style="list-style-type: none">1) Staff's recommendation that the Board not initiate any action at this time; however, any assistance requested by the Governor's appointed task force be provided to the extent of available resources.2) Alternative 1 - A proposal that the Board notify all feepayers who have paid the Fee within the three-year statute period of their potential refund rights.3) Alternative 2 - A proposal that the Board implement the same notification process as proposed for alternative 1, except use paid advertising in major newspapers instead of the direct mailing to feepayers.
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AGENDA - November 17, 1999 Business Taxes Committee Meeting
Vehicle Smog Impact Fee Refund Notification

Action Item	Staff Recommendation	Alternative 1	Alternative 2
Feepayer Notification	Staff recommends that the Board not initiate any action at this time; however, any assistance requested by Ms. Maria Conteras-Sweet, Secretary of the Business, Transportation, and Housing Agency, should be provided to the extent of available resources.	Alternative 1- it is proposed that the Board notify all feepayers who have paid the Vehicle Smog Impact Fee within the three-year statute of limitations of their potential refund rights by: <ol style="list-style-type: none"> 1. Issuing a press release 2. Sending a direct mailing 3. Creating a Board web page 	Same as Alternative 1, except it is proposed that paid advertising in major newspapers be used rather than sending a direct mailing to known feepayers.

Issue Paper Number **99-053**

BOARD OF EQUALIZATION
KEY AGENCY ISSUE

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

VEHICLE SMOG IMPACT FEE REFUND NOTIFICATION

I. Issue

Should the Board of Equalization (Board) notify persons who have paid the Vehicle Smog Impact Fee (Fee) within the three-year statute of limitations period that they may be entitled to a refund and provide them with a claim for refund form?

II. Staff Recommendation

Staff recommends the Board not initiate any action at this time; however, any assistance requested by Ms. Maria Contreras-Sweet should be provided to the extent of available resources. Ms. Contreras-Sweet, Secretary of the Business, Transportation, and Housing Agency, has been directed by Governor Gray Davis to head up a task force including the Department of Motor Vehicles (DMV) and the Department of Finance (DOF) to come up with a workable plan to present to the Legislature for refunding the Fee to all who paid it.

III. Other Alternative(s) Considered

Alternative 1:

It is proposed that the Board notify all feepayers who have paid the Fee within the three-year statute of limitations of their potential refund rights by:

1. Issuing a press release describing the court's decision and the refund process;
2. Sending a direct mailing to known feepayers who are within the three-year statute that notifies them of the court's decision and include a claim for refund form; and
3. Creating a Board web page to provide background information on the court's decision, describe the refund process, and make available a claim for refund form.

Alternative 2:

It is proposed that the notification process described in Alternative 1 be implemented, except that paid advertising in major newspapers be used instead of direct mailing to known feepayers.

FORMAL ISSUE PAPERIssue Paper Number 99053**IV. Background**

In 1990, the California Legislature passed the Motor Vehicle Smog Impact Fee.¹ Until recently, the \$300 fee was imposed when a motor vehicle was registered in California if it was last registered outside the State and the vehicle was not California-certified.²

On October 1, 1999, the 3rd District Court of Appeal declared the Fee to be unconstitutional. On October 19, 1999, Governor Gray Davis directed the DMV to temporarily stop collecting the Fee pending his decision on whether to appeal the 3rd District Court of Appeals' ruling. On October 26, 1999, the Board announced that it was not directing staff to file a petition for review of the Fee with the California Supreme Court. The Board also decided to defer to the Governor so that the State would speak with one voice on the resolution of this matter.

On November 10, 1999, Governor Gray Davis announced that he would not appeal the Court's ruling. He also announced,

“...I am asking the Department of Motor Vehicles which reports to Maria Contreras-Sweet and the Department of Finance to come up with a workable plan to present to the Legislature to return this money. I believe everyone who paid the fee is entitled to a refund. And I have asked these two agencies to find the best approach to make that possible.”

During the course of the November 10, 1999, press conference, Governor Gray Davis said he did not think eligibility for refunds should be limited by the three-year statute of limitations, which the Court of Appeals said applied in the Fee case.

Recent figures obtained from the DMV show that since the fee's inception, 1,675,761 registered vehicles have been subject to the fee. Approximately 715,000 of the fee collections are within the normal three-year statutory refund period. The Fee collections subject to the three-year statutory period are in excess of \$500 million dollars.

As of October 27, 1999, there were approximately 90,000 claims for refund on file with the DMV, the Bureau of Automotive Repair (BAR), and the Board, leaving approximately 625,000 claimants who have not filed a claim for refund. Since many of these fee payers are not engaged in businesses requiring them to report to the Board, they may be unaware of their refund rights under the Sales and Use Tax Law, or that there may be a three-year statute of limitations on fee refunds. They may also be unaware that they can file a claim for refund with the DMV, BAR, or the Board.

To date, notification of fee payers has been limited to newspaper articles, a toll-free telephone number and a website maintained by the attorneys for the Fee plaintiffs, and a DMV website that provides a status of the litigation and referral to DMV's claim for refund form. It does not appear that parties to the litigation have taken any direct action to ensure that all fee payers are notified of their refund rights. Unless notified, it is possible these fee payers may not submit a timely claim for refund. Although the Governor has gone on record as supporting a refund to all fee payers with interest, and has directed his staff to work with the Legislature to accomplish the refund, if the refunds are subject to the three-year statute of limitations it is expected that many fee payers will experience a loss of their eligibility as time passes. Senator Burton's office has indicated that he and Speaker Villaraigosa will author the legislation for the Fee refunds.

¹ Statutes of 1990, Chapter 453, § 1, pp.1955-1956

² Revenue & Taxation Code, §6262, subdivision (a)

FORMAL ISSUE PAPERIssue Paper Number 99053**V. Staff Recommendation****A. Description of the Staff Recommendation**

Staff recommends the Board not initiate any action at this time; however, any assistance requested by Ms. Maria Contreras-Sweet should be provided to the extent of available resources. Ms. Contreras-Sweet, Secretary of the Business, Transportation, and Housing Agency, has been directed by Governor Gray Davis to head up a task force including Department of Motor Vehicles (DMV) and the Department of Finance (DOF) to come up with a workable plan to present to the Legislature for refunding the Fee to all who paid it.

B. Pros of the Staff Recommendation

- Staff's recommendation follows the direction provided by Governor Gray Davis.
- The Governor's assigned task force would have the benefit of the Board's cooperation and support.
- The State will speak with one voice on the refund process, requirements, and timetable.
- Confusion to the public generally and to feepayers specifically would be kept to a minimum.

C. Cons of the Staff Recommendation

- None.

D. Statutory or Regulatory Change

The Governor's task force will develop and present a workable plan to the Legislature. Senator Burton and Speaker Villaraigosa will co-author the bill(s).

E. Administrative Impact

None expected. The Governor made no mention of the Board being involved in the process. If, however, the plan recommended by the task force includes Board participation, the impact will depend on the nature and extent of that participation.

F. Fiscal Impact**1. Cost Impact**

Not applicable.

2. Revenue Impact

Not applicable

G. Taxpayer/Customer Impact

Depends on the recommendation(s) of the task force and the action taken by the Legislature.

H. Critical Time Frames

None.

FORMAL ISSUE PAPERIssue Paper Number 99053**VI. Alternative 1****A. Description of the Alternative**

It is proposed that the Board notify all feepayers who have paid the Fee within the three-year statute of limitations of their potential refund rights by:

1. Issuing a press release describing the court's decision and the refund process;
2. Sending a direct mailing to known feepayers who are within the three-year statute that notifies them of the court's decision and include a claim for refund form; and
3. Creating a Board web page to provide background information on the court's decision, describe the refund process, and make available a claim for refund form.

B. Pros of the Alternative

- Most feepayers would receive notification.
- This alternative would help limit the number of refund claims barred by the statute of limitations.
- Failure to notify feepayers may expose the Board to litigation and ultimately additional workload. This could occur even though there is currently no legal obligation requiring the Board to notify the feepayers.
- This alternative is consistent with the Board's mission statement to serve the public through fair, effective, and efficient tax administration.

C. Cons of the Alternative

- This alternative may not be consistent with the actions taken by the Governor's task force and the Legislature, resulting in confusion.
- If the Board initiates a notification process ahead of the Governor's task force participants, the public might assume that the Board is handling, processing, or in a position to expedite refund claims. The Board is not currently in a position to meet those expectations.
- The cost of notifying the feepayers would be approximately \$350,000.
- A large volume of undelivered mail will require additional handling. We are not currently budgeted or staffed to take on any material workload outside of our normal tax programs.

D. Statutory or Regulatory Change

Not applicable.

E. Administrative Impact

Additional staff and resources would be required to implement this alternative. The Administrative Support Division is expected to need additional staff or overtime resources to process 715,000 direct mailings. The Headquarters Operations Division would require additional staff or overtime hours to inventory claims for refund. Funding for the additional positions will either have to be obtained through the deficiency process under Section 27 of the Budget Act or through redirections from normal program activities.

FORMAL ISSUE PAPERIssue Paper Number 99053**F. Fiscal Impact****1. Cost Impact**

The current cost estimates are:

<u>Elements</u>	<u>Cost</u>	<u>Comments</u>
Press release	\$ 1,000	Minimal staff time required
Direct Mailing	340,000	
Technology Services Div: Programming	4,000	Related to the direct mailing.
Website	5,000	
Total	<u>\$ 350,000</u>	

2. Revenue Impact

Not applicable.

G. Taxpayer/Customer Impact

While it would appear that many of the feepayers would benefit from this alternative because they would be receiving timely notification, the Board is not in a position to make statements about the future intentions of the Governor's task force and the Legislature. There is a risk that the information the Board is able to provide would be incomplete from the feepayer perspective and generate a significant volume of telephone inquiries.

As the Governor has declared his intent to work toward refunds including interest to all feepayers, independent Board notification has the potential to confuse the public regarding how, when, and to whom the refund claims should be submitted.

H. Critical Time Frames

If the State is constrained by a three-year statute of limitations, those feepayers who do not file a claim within three years of payment of the fee may lose their ability to make a claim. However, if the Legislature acts in accord with the Governor's stated views, all feepayers will have an opportunity to get a refund.

VII. Alternative 2

A. Description of the Alternative

It is proposed that the notification process described in Alternative 1 be implemented, except that paid advertising in major newspapers be used instead of direct mailing to known feepayers.

B. Pros of the Alternative

- Most feepayers would receive notification.
- This alternative would help limit the number of transactions that become barred by the statute of limitations.
- Failure to notify feepayers may expose the Board to litigation and ultimately additional workload. This could occur even though there is currently no legal obligation requiring the Board to notify the feepayers.
- This alternative is consistent with the Board's mission statement to serve the public through fair, effective, and efficient tax administration.
- Newspaper advertising may reach feepayers who might not receive a direct mailing because the address provided to the Board by the DMV is no longer valid.

C. Cons of the Alternative

- This alternative may not be consistent with the actions taken by the Governor's task force and the Legislature, resulting in confusion.
- If the Board initiates a notification process ahead of the Governor's task force participants, the public might assume that the Board is handling, processing, or in a position to expedite refund claims. The Board is not currently in a position to meet those expectations.
- The cost of notifying the feepayers would be approximately \$100,000.
- Newspaper advertising may generate a large number of phone calls and/or claims for refund by persons who had other transactions with DMV, but did not pay the Fee. This would materially increase both information-handling and processing costs.

D. Statutory or Regulatory Change

Not applicable.

E. Administrative Impact

Additional staff and resources would be required to implement this alternative. The Headquarters Operations Division would require additional staff or overtime hours to process claims for refund. Funding for the additional positions will either have to be obtained through the deficiency process under Section 27 of the Budget Act or through redirections from normal program activities.

F. Fiscal Impact

1. Cost Impact

Similar to Alternative 1, except the \$340,000 approximate cost of direct mailing would be replaced with the cost of newspaper advertising. Also, newspaper advertising may generate a large number of claims by persons who are not qualified to receive the Fee refund, which would materially increase processing costs. The cost of a one-time statewide newspaper advertising campaign is estimated to be in excess of \$100,000.

FORMAL ISSUE PAPERIssue Paper Number 99053**2. Revenue Impact**

None.

G. Taxpayer/Customer Impact

While it would appear that many feepayers would benefit from this alternative because they would be receiving timely notification, the Board is not in a position to make statements about the future intentions of the Governor's task force and the Legislature. There is a risk that the information the Board is able to provide would be incomplete from the feepayer perspective and generate a significant volume of telephone inquiries.

As the Governor has declared his intent to work toward refunds including interest to all feepayers, independent Board notification has the potential to confuse the public regarding how, when, and to whom the refunds claims should be submitted.

H. Critical Time Frames

If the State is constrained by a three-year statute of limitations, those feepayers who do not file a claim within three years of payment of the fee may lose their ability to make a claim. However, if the Legislature acts in accord with the Governor's stated views, all feepayers will have an opportunity to get a refund.

Prepared by: Headquarters Operations Division
Sales and Use Tax Department

Current as of: November 15, 1999

STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N Street, Sacramento, California
(P.O. Box 942879, Sacramento, CA 94279-0001)
Telephone: (800) xxx-xxxx
Facsimile: (916) 445-2249 or 322-8834

JOHAN KLEHS
First District, Hayward

DEAN ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

NOTICE
REFUND OF THE
VEHICLE SMOG IMPACT FEE

Month and Year

Dear Smog Impact Feepayer:

On October 1, 1999, the California Third District Court of Appeal declared the Vehicle Smog Impact Fee unconstitutional. As a result of this ruling, the Board of Equalization is attempting to notify all smog impact feepayers of the requirement to file a claim to obtain a refund of this fee.

The Board of Equalization has obtained information from the Department of Motor Vehicles indicating that you may be eligible for a refund of the \$300 Vehicle Smog Impact Fee. This fee was required to be paid when you first registered your vehicle(s) in California. It is important that you follow the instructions provided on the attached "Vehicle Smog Impact Fee – Claim for Refund" form to obtain a full refund of the fee paid.

Generally, you may be eligible for a refund if you file a claim within three (3) years from the date the fee was paid. **You must file your claim within this three (3) year period or possibly lose your right to a refund.**

Evidence of payment of the fee is not required at this time. Simply provide the information requested on the claim for refund form, sign and date the claim, and mail it to the address provided. However, if we are unable to verify your payment of the fee based on information provided to us by the Department of Motor Vehicles, you may be contacted to obtain proof of payment of the fee.

If you require additional information, you may call our toll free number 800-xxx-xxxx.

Sincerely,

California Board of Equalization

Claim for Refund Vehicle Smog Impact Fee

FOR BOARD USE ONLY			
TAX	OFFICE		NUMBER
SR			
BATCH		CLEARED DATE	

Please Mail Claim To:

State Board of Equalization
Sales & Use Tax Department
PO Box XXXXXX
Sacramento, CA 94279-00XX

IMPORTANT - PLEASE TYPE OR PRINT LEGIBLY

1. NAME	4. VEHICLE #1 - Make & Model A. VEHICLE LICENSE PLATE # B. VEHICLE ID NO. (VIN) C. DATE PAID
2. MAILING ADDRESS (STREET)	B. VEHICLE ID NO. (VIN) C. DATE PAID
3. CITY, STATE, & ZIP	VEHICLE #2 - Make & Model A. VEHICLE LICENSE PLATE # B. VEHICLE ID NO. (VIN) C. DATE PAID
5. EVIDENCE OF PAYMENT <div style="text-align: right;">ATTACHED ?</div> <div style="display: flex; justify-content: flex-end;"> <div style="text-align: center;">YES <input type="checkbox"/></div> <div style="text-align: center;">NO <input type="checkbox"/></div> </div>	B. VEHICLE ID NO. (VIN) C. DATE PAID

I CERTIFY under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

DATE (MONTH, DAY, YEAR)	SIGNATURE OF FEE PAYER	DAYTIME TELEPHONE AREA CODE & NUMBER
/ /		()

INSTRUCTIONS

ITEM NUMBER

1. Name (last, first, and middle initial) of the individual(s) who paid the fee and is entitled to the refund. *Please note:*
This name will be printed on the refund warrant.
2. Enter your complete address. (If there is an "in care of" address, enter the C/O name first on the street address line, followed by the street address).
3. Enter the complete city name, state & zip code.
4. Enter the vehicle make and model.
- 4A. Enter the vehicle license plate number.
- 4B. Enter the complete vehicle identification number (VIN).
- 4C. Enter the date the fee was originally paid, if known.
5. Optional - Please attach any documentary evidence to substantiate payment (e.g. cancelled check, DMV receipts. Credit card receipt, a copy of the vehicle registration, other).

***** If you have paid the fees on more than 2 vehicles, please provide the same information for each vehicle and attach to this claim form.**